United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

75-1031

To be argued by
ROBERT P. WALTON

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 75-1031

UNITED STATES OF AMERICA,
Appellee,

—v.—

SAMUEL WEISMAN,
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES OF AMERICA

PAUL J. CURRAN,
United States Attorney for the Southern District of New York, Attorney for the United States of America.

ROBERT P. WALTON,
JOHN D. GORDAN, III,
Assistant United States Attorneys, Of Counsel.

TABLE OF CONTENTS

TABLE OF CASES

PAGE

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 75-1031

UNITED STATES OF AMERICA,

Appellee,

—v.—

SAMUEL WEISMAN,

Defendant-Appellant.

BRIEF FOR THE UNITED STATES OF AMERICA

Preliminary Statement

Samuel Weisman appeals from a judgment of conviction entered on January 7, 1975, in the United States District Court for the Southern District of New York, after an eight day trial before the Honorable Charles M. Metzner, United States District Judge, and a jury.

Indictment 73 Cr. 903, filed in 13 counts on September 25, 1973, charged Samuel Weisman, Harold Lassoff and 14 other defendants with conspiracy to violate the securities laws and to commit mail fraud, with substantive violations of the securities laws, with committing mail fraud, and with making false statements, and submitting false documents, to the United States Securities and Exchange Commission. The defendants Samuel Weisman and Harold Lassoff were named, together with the other 14 defendants, in Count One, the conspiracy count (18 U.S.C. § 371), Count Three,

which alleged that all of the defendants had participated in a fraud connection with the purchase and sale of securities (15 U.S.C. §§ 78j(b) and 78ff), and Counts Five through Eleven, which charged all sixteen defendants with mail fraud (18 U.S.C. § 1341).

The indictment resulted in two separate trials, one, involving five defendants, beginning on April 17, 1974, and the other, the trial of Weisman and Lassoff, both of whom had been severed from the first trial, beginning in November, 1974. Prior to the first trial, nine defendants pleaded guilty;* at the conclusion of the first trial, four additional defendants were convicted and one was acquitted.**

The Government proceeded to trial against Weisman and Lassoff on Counts 1, 3, 6 and 7 on November 18, 1974. At the close of the Government's case on November 25, the Court dismissed Count Six as to Lassoff. On November 27 the jury convicted Weisman on Counts One and Three and acquitted him on Counts Six and Seven; the jury acquitted Lassoff of the three counts which it considered.

On January 7, 1975, the Court imposed a fine of $5,000 on Weisman.

---

* Stephan Zardus (Count 4), Robert P. Santis (Count 2), Herbert Shulman (Count 3), Steven Adlman (Count 1), Robert Kolbert (Count 1), Stanley Schwartz (Count 2), Martin Roth (Count 3), Irwin Hyman (Count 1) and Dan Anfang (Count 3).

** Each defendant, except for Stephen Hagler, was convicted on all counts submitted to the jury. The defendant Theodore Koss was convicted on Counts 1 through 5, 8, 11 and 13; the defendant Koss Securities Corporation on Counts 1 through 5, 8 and 11; Erwin Layne on Counts 1, 3, 5, 8 and 11; and William McGee on Counts 1, 3 and 11. The convictions of these defendants have been affirmed, *United States* v. *Koss*, 506 F.2d 1103 (2d Cir. 1974), *cert. denied as Layne* v. *United States*, 43 U.S.L.W. 3500 (March 17, 1975).

Statement of Facts

The Government's Case

In July, 1968, Robert P. Santis founded and became the president of Automated Information Systems, Inc., a computer consulting company. During its first fiscal year Automated had a net loss of approximately $9,000 and during its second fiscal year realized a profit of about $8,500 (GX 1).*

Towards the end of 1970, Santis decided to make a public offering of 65,000 shares of the common stock of Automated at a price of $1.00 per share, and, on December 2, 1970, an offering circular with respect to this offering became effective. The offering was to be on a "best-efforts, all-or-none" basis, which meant that if all 65,000 shares were not sold within 90 days of December 2, 1970, the individuals who had ordered shares would get their money back (GX 1; Tr. 555).

In late December, 1970, Murray Levine approached Michael Hellerman and his associate, Murray Taylor, in connection with the Automated offering. Levine told Hellerman and Taylor that Theodore Koss, the principal of Koss Securities, the underwriter for the Automated stock, had not been able to sell all of the 65,000 shares, and asked Hellerman if he would be interested in underwriting the balance. Hellerman said that he would be interested, but only if he were given control over, or had "the box" in,** all 65,000 shares, and would receive one-half of the proceeds

---

* "Tr." refers to the trial transcript, "GX" to Government exhibits in evidence, "DX" to Defense exhibits and "Def. Br." to the Appellant's brief.

** The reason Hellerman wanted "the box" in the stock was that he intended to cause the price of the stock to go up by use of manipulative devices, and it would be necessary to prevent independent stockholders from selling shares during the manipulation since such sales would depress the price.

of the sale, or $32,500, for his efforts. Levine said that he would check with "Teddy" Koss and get back to Hellerman (Tr. 53-55).

Hellerman heard nothing from Levine until mid-February, 1971, at which time Levine met with Hellerman and Taylor again. He told Hellerman and Taylor that Interstate Equity Corporation, which was operated by Stephen Zardus, had been enlisted as an additional underwriter, but that Interstate had not been particularly successful in selling the stock. Levine told Hellerman and Taylor that Koss had found purchasers for about 15,000 shares and Zardus for about 4,500 shares, leaving about 45,000 shares unsold. Hellerman agreed to try to sell the rest if Levine could get Koss to guarantee that he would sell his 15,000 shares to Hellerman at $1.50 a share and if Zardus would cooperate in maintaining "the box". Levine told Hellerman that there would be no problem with Zardus, and that he would arrange a meeting with Robert Santis, the president of Automated, to discuss Hellerman's terms.* Hellerman agreed to accept $31,000, rather than $32,500, for selling the stock (Tr. 56-61).**

Within a week or so, Hellerman, Taylor and Levine met with Santis at Peacock Alley in the Waldorf Astoria Hotel to discuss Hellerman's proposition. When Santis complained to Hellerman about Hellerman's request for $31,000, Hellerman assured Santis that his services would be worthwhile since he planned to move the price of the stock up from $1.00 a share to a much higher level, which

---

* At about the same time, Santis met with Zardus at the Plaza Hotel, where Zardus was told that Santis knew someone who could arrange to sell the stock provided Zardus was willing to do the paperwork and accept less than a full commission. Zardus agreed to this (Tr. 553-556).

** The $31,000 figure represented the original request for $32,500 (one-half of the entire proceeds of the offering) less the $1,500 commission of Koss Securities Corporation (Tr. 60, 61).

would benefit Santis. Santis agreed to Hellerman's terms (Tr. 61-63).

During the balance of the month of February, Hellerman and Taylor set about disposing of the Automated stock. About 18,000 shares were sold to various individuals with whom Hellerman had dealt in the past. These purchasers were told that it was Taylor's deal, that the stock would go up, that Taylor would guarantee any losses, that Hellerman would stand behind Taylor's guarantee and that Taylor and Hellerman were to get 50% of any profits realized by the purchasers. Hellerman and Taylor were not able to dispose of all of the shares in this manner, however, and, therefore, for purposes of completing the offering, the remaining shares were "sold" to persons whose names were taken out of the telephone book (Tr. 64-72, 357-61, 565-66; GX 4).

Around the third week in February, Zardus, Santis, Taylor, Hellerman and others met at the Pier 52 Restaurant in Manhattan, at which time it was agreed that Zardus, who was going to front for Taylor and Hellerman, would cooperate with Hellerman and Taylor, that he was to mail confirmations only to Hellerman's regular customers and not to the "purchasers" whose names were taken out of the telephone book, and that, as time went on, he was to sell to Hellerman the shares which he had already committed to Interstate's customers (Tr. 72-74, 556-559).

On February 26, 1971, Hellerman and Taylor met with Zardus, Santis and an attorney at the Waldorf Astoria for the purpose of paying Interstate for the stock which Taylor and Hellerman had disposed of. Hellerman apparently thought that all but 22,000 shares had been sold to his regular customers, but when Zardus added up the amounts which had been received from them it was discovered that actually 28,000 shares had not been sold to actual pur-

chasers, so Hellerman told Taylor to supply Zardus with additional names taken from the telephone book to list on his records. Hellerman then paid Zardus $22,000 in cash and had Taylor draw two checks payable to Interstate, one for $2,000 and one for $4,000, to make up the total of $28,000 (Tr. 77-80, 559-562; GX 2, GX 2A).

A few days later, in late February or early March, 1971, Santis, Taylor and Hellerman met at the Park Sheraton Hotel in New York City so that Hellerman could explain to Santis how Santis was to pay him the $31,000. The problem arose because Automated's offering circular specified that the proceeds of the stock offering would be applied to the payment of various development expenses, none of which included Hellerman and Taylor.*

Hellerman therefore told Santis to disguise the payment by drawing an Automated check for $31,000 payable to a nominee, "Louis Greenblatt," and showing the payment on the books as having been for the purchase of a patent or invention. Hellerman also explained to Santis that, since he had paid out $28,000 for the shares he and Taylor had disposed of, the $3,000 which he was going to get would not be enough to pay off brokers and do whatever else was necessary to start the price of the stock moving up. Hellerman asked Santis if he could spare more of the proceeds. Santis said he could spare an additional $10,000, for a total of $41,000. Since Automated had not yet received the proceeds of the offering from Interstate and Koss, the two men agreed that Santis would pay $21,000 of this amount after the closing with Interstate and the $20,000 balance after the closing with Koss (Tr. 81-84).

---

* (GX 1, p. 7). The offering circular also, of course, made no mention of the fact that Taylor and Hellerman were acting as underwriters, nor did it disclose that the underwriting commissions were $31,000 (Hellerman and Taylor) and $1,500 (Koss) instead of $6,500.

In the early part of March the closings with Interstate and Koss took place, and Hellerman and Taylor received the $41,000 from Santis (Tr. 80, 83-88, 562-63; GX 3, 3a).

In March and April, 1971, Hellerman and Taylor set about raising the price of the Automated stock by promoting orders from Florida through a man named Norman Robbins and by selling shares to various individuals on a guarantee basis. For example, during this period Hellerman sold 5,000 shares to Jackie Mason by guaranteeing Mason against any loss in return for a kickback to Hellerman of one-half of any profits that Mason might make. Hellerman also paid off a trader at Dopler, Gray to control Automated's "pink sheet" prices. Initially, Hellerman encountered some problems with "Teddy" Koss, who did not feel he was bound by the agreement that Hellerman had made with Murray Levine and was selling shares behind Hellerman's back, but eventually Hellerman was able to straighten this out (Tr. 92-105, 372-73, 384-87).

By the early part of May, 1971, Hellerman, by selling the stock on a guarantee basis, by controlling the "pink sheet" prices and by eliminating sales by anyone he did not control, had moved the price of the stock to over $4 per share and was looking for new purchasers at this higher level. To this end Hellerman, who was staying at the Carriage House in New York, telephoned the defendant, Samuel Weisman, on May 3. According to Hellerman, their conversation went as follows:

> "I told Mr. Weisman that 'This is different than the Tabby's deal, it is different than the Imperial deal, it's different than the Belmont deal.'
>
> I explained to him that in those deals I guaranteed, or specifically in Tabby's I guaranteed his losses against half the profit. In this deal I would put up half the cash.

I told Mr. Weisman — I said, 'You know, if I'm putting up half the cash that I got the box in the stock, Sam, and I am taking the stock to $20, we'll all make a lot of money. But it's going to be a 60, 90-day deal, but whatever amount of shares you buy I'll give you half the cash. Now, if the stock drops 25 per cent, you have a right to sell out all the stock and you keep the proceeds, if it should drop, to make yourself whole with the cash that I gave you or will give you and the proceeds you will get from selling out the stock. You make yourself whole first and then give me back whatever is left over for myself if the stock should drop 25 per cent. So this way you can't lose.

'On top of that, Sam, that in case it does drop, let's say 40 per cent, and you just get your money back between the cash and the sale of the stock, you could take a tax loss for half the money that you invested with a check and you got my cash that you don't have to report. So you can't lose because I'm giving you enough leeway'.

And he said, 'Fine. How many shares should I buy?'

So I said, 'Buy as many as you could afford to buy.'

So we agreed on 3000 shares."*

A few minutes later Weisman called Hellerman back and said that his broker, Harold Lassoff, who was employed by the firm of Pressman, Frohlich & Frost, had not been able to find 3,000 shares of Automated. Hellerman then spoke to Lassoff directly and told him where to find the stock. Shortly thereafter Weisman called Hellerman back

---

* Tr. 105-108, 381. Weisman could, of course, make over $15 a share before he was "taken out" of the stock (Tr. 361).

and said that he had been able to get 3,000 shares for about $14,000.* Hellerman then sent Weisman one-half of the purchase price, or about $7,000, in cash (Tr. 108, 9).

According to Hellerman, Samuel Weisman did not need to have his arm twisted to become involved in Automated because he was quite familiar with Hellerman and the ways in which Hellerman operated. Weisman, an attorney, had been very close to the Hellerman family, had known Hellerman's father, had handled his estate after he died, and had known Michael Hellerman since birth. As Hellerman told it, Samuel Weisman and his son, Herbert Weisman, had a law partnership which, during the late 1960's, had its offices in the same building as J. M. Kelsey & Company, a securities firm in which Hellerman, who had been barred from the securities business for life in 1961, had a hidden ownership interest. When in the fall of 1969 Hellerman was engaged in manipulating the price of the stock of Tabby's International, Samuel Weisman, on Hellerman's recommendation and with full knowledge of the manipulation and of Hellerman's relationship to J. M. Kelsey, had purchased 2,000 shares of Tabby's, on which he had doubled his money in two weeks. Weisman's son, Herbert, also purchased shares at the same time, as did Weisman's secretary, Rose Marver, both with similar success (Tr. 109-131, 197, 206; GX 11(a), 11(b), 11(c)).

Hellerman also said that he had recommended two other stocks to Weisman which Weisman knew he was manipulating, one, Imperial Investment Corporation, in the fall of 1969, and the other, Belmont Franchising Corporation, in the spring of 1970, but he did not know if Weisman had actually purchased either stock. Finally, in November, 1970, Hellerman had handed Samuel Weisman a copy of

---

* The price was about $4.50 per share. A confirmation of the purchase was mailed to Weisman on May 3, 1971 (Tr. 751, 2; DX O).

an indictment which charged Hellerman with 72 offenses in connection with his manipulation of the Imperial stock (Tr. 132-142, 200, 236).

On the same day, May 3, on which Weisman purchased 3,000 shares of Automated, Weisman asked Hellerman if there was "room in the deal" for his broker, the defendant Harold Lassoff. Hellerman said there was, provided Lassoff was willing to agree to the same terms as Weisman had. Weisman said that he would have Lassoff call Hellerman, and that he would guarantee Lassoff's performance of whatever Hellerman and Lassoff agreed to (Tr. 143-144).

The defendant Lassoff immediately telephoned Hellerman and asked him how high he expected to take the price of the stock. Hellerman replied that he expected to take it to at least $20 a share. Lassoff said that he had an important client—Martin Cohen—to whom he would recommend Automated if he could be assured that Cohen would make money. Hellerman assured Lassoff that Cohen would make money if he agreed to hold the stock for 60 to 90 days and did not "break the box" or do anything behind Hellerman's back. Hellerman told Lassoff that he could purchase the stock on the same terms as Weisman had, namely, that Hellerman would put up one-half of the purchase price, in cash, in return for receiving 50% of the profits. Hellerman also told Lassoff that he would give Lassoff one-half of his profits on Cohen's stock if Lassoff put Cohen into the deal. Lassoff then contacted Cohen, and, the following day, May 4, Lassoff reported to Hellerman that he had purchased 3,000 shares of Automated for Cohen and that he wanted Hellerman to meet Cohen (Tr. 144-147, 708-19, 752).*

---

* A confirmation of the purchase of 3,000 shares was mailed to Cohen on May 4, 1971.

A meeting was arranged for May 5 or 6. Upon meeting with Hellerman at Cohen's office building, but before actually seeing Cohen, Lassoff asked Hellerman not to tell Cohen that Hellerman had "the box" in the stock, was taking the stock to $20 a share and was paying off brokers in the process. When Hellerman and Lassoff finally met with Cohen, who was the President of International Stretch Products, Cohen asked Hellerman why he was willing to put up 50% of the purchase price in cash. Hellerman explained that he wanted to accumulate a lot of the stock without anyone discovering that he was buying it, and, therefore, was willing to become Cohen's "partner" in the purchase, provided Cohen would agree not to sell the stock right away. He also suggested to Cohen that if the stock should go down in value Cohen could conceal the fact that Hellerman had actually paid one-half of the purchase price in cash and take a tax loss. Cohen rejected that suggestion, but did agree to take $7,500 in cash from Hellerman on the understanding that he would return it to Hellerman if the price of the stock went up and he made a profit (Tr. 147-52, 720-726).

In the next day or two, Hellerman was in contact with Lassoff, who was nervous about his involvement—and that of Cohen—in the deal. To set his mind at rest, Hellerman assured Lassoff that he would be getting a big order for Automated stock which would demonstrate that Hellerman was able to provide the buying power necessary to move the price up. Hellerman then referred one of his associates, Erwin Layne, to Lassoff, after instructing Layne to place a "wooden ticket" order for 10,000 shares of Automated with Lassoff, that is, an order that Layne had no intention to pay for (Tr. 152-155, 392, 727-732).

On Friday, May 7, when Pressman, Frohlich & Frost refused to process this order for Layne, who was unknown to them, Lassoff spoke to one of the principals of the firm, Harold Frohlich, about the order, and apparently let slip

out the fact that Hellerman had referred Layne to the firm. Frohlich, who knew about Hellerman, blew his top, and wanted to know about the circumstances under which Lassoff had purchased Automated for Weisman and Cohen (Tr. 155, 6, 685-687).

After speaking with Frohlich, Lassoff telephoned Hellerman and told him that he could not buy this stock for Layne, that Frohlich had discovered that Hellerman was involved in Automated, and that Frohlich was going to call Weisman and Cohen. Hellerman immediately telephoned Weisman and told him that someone from Pressman, Frohlich would be calling him (Tr. 155, 156).

A short while later, Weisman telephoned Hellerman to report on his conversation with Frohlich. Frohlich, he said, had asked him whether he, Weisman, knew that Hellerman was a swindler who was under indictment, to which he replied that he knew about Hellerman's indictment and that Frohlich had no right to tell him what stock to buy. Weisman concluded his conversation with Hellerman by telling Hellerman that he had done him "a good turn" in his handling of Frohlich and that he expected that he would "make money" on Automated, and not "just . . . a little bit . . . (Tr. 156, 7, 688)."

Later that same day, Friday, May 7, Lassoff telephoned Hellerman to report that Cohen had, indeed, been contacted by Frohlich, and, as a result, wanted to get out of the deal. Lassoff, who was very upset about what had happened, also telephoned Hellerman at home over the weekend of May 8 and 9. Hellerman told him to find out on Monday whether Frohlich was going to report his involvement in Automated to the SEC (Tr. 157-159, 688-690).

During the following week, Hellerman and Taylor met with Lassoff and his wife. Lassoff, who had been under pressure from Cohen to sell the stock, denied that he had

told Frohlich that Hellerman was involved in the deal; but Hellerman did not accept that, and told Lassoff that he expected that he and Cohen would stay with the "agreement" not to sell the stock. Later in the week, Hellerman arranged by telephone for Lassoff and Weisman to attend a breakfast meeting on the following Sunday, May 16, at Hellerman's home in Bayside, Queens (Tr. 159-162, 567).

On the morning of Sunday, May 16, Zardus, Taylor, Weisman, Lassoff and Hellerman met at Hellerman's house. At that meeting the following, according to Hellerman, took place:

> "We sat down and I turned to Mr. Sam Weisman and I said, 'Sam, I had to call this meeting, I'm sorry to get you here on a Sunday, but you guaranteed Lassoff—Harold.'
>
> I said, 'I have had deals with you before. If Cohen sells the stock and breaks the box I am dead, I can't put other people into the stock now, Sam, because I don't know—I can't put good money into the deal again, I don't know what Frohlich is going to do.'
>
> I told Sam at the table that it was my opinion—and Harold could deny it all he wants—that the only way Frohlich found out I was in the deal was through Lassoff, and I said, 'Either you're going to buy the 3000 shares, Sam, or you're going to keep Cohen in the deal,' I said, 'because that's what you guaranteed to us.'
>
> And Steve Zardus turned to Sam—they were sitting across from each other—and he said, 'Sam, I know how Michael works, you know how Michael works,' he said, 'We all got to try to pull together here and save the deal or we're all going to lose [a lot] of money.'

> Sam says, 'What do you want me to do, Mike?'
>
> I said, 'I want you to keep Cohen in the deal, Sam, I don't care how you keep him in, I don't care what you tell him, keep him in the deal and if he wants to go out of the deal and you can't keep him in it's your obligation to go out and buy the 3000 shares of stock.' " *

When Lassoff reported that he didn't know whether Frohlich had gone to the SEC, Zardus suggested that Frohlich be paid off to keep him from reporting Hellerman's involvement. Lassoff replied that Frohlich would not take the money and that there was nothing that could be done.** Lassoff then telephoned Cohen and persuaded him to see Weisman, and Weisman and Lassoff left to meet with Cohen at his home at Kings Point (Tr. 162-168, 567-74, 667-68).***

When Weisman and Lassoff arrived at Cohen's house, Weisman told Cohen that he had been close to Hellerman's family for a long time, that Hellerman had been accused of something but would not be convicted, and that Hellerman was actually "just a big bad boy."**** He also assured Cohen that there was nothing illegal about accepting a guarantee in the stock and that he was not selling his 3,000 shares. At the conclusion of the meeting with Cohen, Weisman telephoned Hellerman from Cohen's house to report that he had convinced Cohen to hold on to his stock for 2 or 3 weeks (Tr. 168, 735-37, 749).

---

* Tr. 163, 4. Zardus confirmed Hellerman's description of what was said (Tr. 571, 72).

** Frohlich's attorneys had contacted the SEC on May 11, a fact which was apparently known to Lassoff but concealed from the others (Tr. 697-702).

*** The testimony of both Hellerman and Zardus as to what was said at this meeting overwhelmingly showed that Weisman was aware that the stock was being manipulated.

**** Both Cohen and Frohlich (who had spoken to Weisman about the Layne order) confirmed that Weisman knew that Hellerman was under indictment.

Despite this temporary victory, Hellerman was unable to provide any substantial additional purchasers for Automated and the price of the stock went down. Later that year Weisman asked Hellerman to make him whole for the loss he had sustained, and in September, Hellerman agreed to give Weisman a check for $14,000, the amount that Weisman had paid for his 3,000 shares, provided Weisman would first give him back the cash guarantee he had advanced Weisman. Weisman gave Hellerman the $7,000, but Hellerman never gave Weisman the $14,000 check (Tr. 168-170, 399-423, 530, 31).

The Defense Case

Weisman's defense was that he did not know that Hellerman was manipulating the Automated stock and that Hellerman was framing him because Weisman had complained to the District Attorney's office about the $7,000 which Hellerman had swindled from him (Tr. 795-796, 842).

Weisman testified on his own behalf. On direct examination, Weisman claimed that Hellerman had never told him that any stocks he had bought through him were rigged; that he had never heard the term "the box" until the trial; that he had purchased Tabby's International upon Hellerman's recommendation in 1969, but had not learned until much later that his son had bought it and didn't know until the trial that his secretary had also bought some; that he had purchased shares of Imperial Investment Corporation, but not upon Hellerman's recommendation; that Hellerman had suggested that he buy Belmont Franchising, but he didn't; that as of May 3, 1971, he did not know that Hellerman had been indicted in the Imperial case but he did seem to recall that Hellerman had been under investigation in Florida; and that as of May, 1971, he did not know that Hellerman had been the subject of any SEC proceeding but was aware that he had been involved in a proceeding by the New York State Attorney General's office in 1962, the result

of which, he thought, was that Hellerman had been banned from the securities business for only five years (Tr. 795-799, 813).

As to the Sunday breakfast meeting at Hellerman's house on May 16, Weisman asserted that it had nothing whatsoever to do with holding the manipulation together but rather concerned the prospects of the company and the fact that it was "on the verge of getting contracts" and the stockholders "would make money on the stock." According to Weisman, there was absolutely no discussion at the meeting about his having "guaranteed" Lassoff or Cohen, and the only reason he went to Cohen's house that Sunday was that Lassoff "would like to introduce me to Mr. Cohen who had a beautiful house in Kings Point" (on the North Shore of Long Island) which, since Weisman was going back to Long Beach (on the South Shore), "wouldn't be much out of the way." He did admit, however, that, in addition to looking at Cohen's house, he had told Cohen that he had known the Hellerman family for a long time, he had purchased Automated at Hellerman's recommendation and that he was not planning to sell his shares. But he denied that he had telephoned Hellerman from Cohen's house (Tr. 819-828).

According to Weisman, in August or September, 1971, he had told Hellerman that he wanted to sell his Automated shares, the price of which had dropped, and was willing to release Hellerman from his obligations under the guarantee. Hellerman responded by pleading with him not to sell and assured him that no matter what happened to the stock Weisman would get his $14,000 back. Thereafter, on September 24, Weisman made out a check for $82 to Murray Taylor, which Hellerman told him was necessary to pay transfer taxes on the transfer of his stock to "someone that will take the stock off your hands." A few days later Hellerman told him that he needed the $7,000 cash "guarantee" back in order to give it to the purchaser of Weis-

man's shares before he could get Weisman the $14,000. Weisman gave Hellerman the $7,000; all that Weisman got from Hellerman was a couple of worthless checks (Tr. 829-842; DX C, DX D).

After starting a lawsuit against Hellerman to collect a number of debts, in response to which Hellerman claimed that he did not owe Weisman anything, Weisman went to the District Attorney's office in mid-March, 1972, and complained that Hellerman had committed a larceny by trick to obtain the $7,000. Shortly thereafter, Weisman and his attorneys met with Hellerman, Hellerman's attorneys and Hellerman's mother to discuss the lawsuit. According to the defense, when Hellerman learned at this meeting that Weisman had filed a complaint with the District Attorney's office he became enraged and told Weisman: "I'll dance at your funeral and I'll piss on your grave" (Tr. 842-846, 853-854).

On cross-examination, Weisman admitted that he had represented Hellerman in a proceeding brought by the New York Attorney General's office involving a stock called Chrislin and knew that Hellerman had been suspended from the securities business for his involvement; admitted that he knew his son had represented Hellerman in the mid-1960's in a case in which Hellerman had been charged with having stolen some bonds; admitted that the office of his son, whom he claimed not to have known to have purchased Tabby's International in 1969, was right next to his, and that his secretary, whom he also claimed did not tell him about Tabby's, had worked for him for 25 years; denied that Hellerman had told him he would make a profit in Tabby's, but admitted that he had told the Grand Jury the opposite; claimed that he couldn't recall whether he had learned that Hellerman was under investigation in the Imperial case prior to May 3, 1971, although he did recall coming to the United States Attorney's office with Hellerman before the Automated deal for some reason that he could not remember

and meeting with Mr. Seymour and Mr. Morvillo; admitted that he learned that Hellerman had been named with Johnny Dioguardi in the Imperial indictment when the indictment was publicized;* denied that he ever assumed that Hellerman would tell him when to sell his Automated shares, but admitted that he had told the Grand Jury the opposite; admitted that he told the Grand Jury that the reason for the breakfast meeting at Hellerman's house was in connection with the purchase of Automated stock by Cohen and not in connection with the business of the company; and denied having told Cohen, at his house following the breakfast meeting that Hellerman had been accused of something but would not be convicted (Tr. 866-874, 893-896, 910-913, 915-925, 933-942, 947-949, 971-985, 988).

Weisman also called Benjamin Adler, Esq., who testified that at a meeting with Hellerman and others on March 15, 1972, it was his "recollection" that he had told Hellerman that Weisman had been to the District Attorney's office the day before and that it was that statement which provoked Hellerman's comments concerning Weisman's funeral and his grave (Tr. 1037-1038). Weisman also called nine character witnesses.**

The Government's Rebuttal

In rebuttal the Government called Robert Morvillo, Esq., who testified that in approximately October, 1970, while he was Chief of the Frauds Unit of the United States Attorney's Office, he had a meeting with Whitney North Seymour, Jr., then United States Attorney, Hellerman and Weisman, in which he told Weisman that he was investigating the Imperial case, that Hellerman was the principal target of the investigation, that the Government had an

---

* The Imperial indictment was filed on November 19, 1970 (Tr. 140).

** Lassoff, who did not testify, called one character witness in his defense.

overwhelming case against Hellerman and that he was interested in Hellerman's cooperation with the Government in connection with others who were believed to be involved (Tr. 1059-1064).

ARGUMENT

POINT I

No error was committed in refusing to give a charge concerning Weisman's knowledge of Hellerman's prior dealings in rigged stocks.

Weisman asserts that his conviction should be reversed because the Trial Court did not charge the jury as to the use it could put evidence that Weisman knew from prior dealings with Hellerman that Hellerman was manipulating the Automated Stock. This argument is devoid of support in either law or fact and should be rejected.

Michael Hellerman testified that on May 3, 1971, he telephoned Weisman concerning the Automated stock, which was then selling for about $4.50 a share, and told him that (1) he would put up, in cash, one-half of the purchase price of any shares that Weisman purchased in contrast to the earlier deals, including in Tabby's International stock, in which Hellerman had guaranteed Weisman against loss, (2) he had "the box" in the stock, (3) he was taking it to $20 a share, in 60 to 90 days, (4) Weisman, by virtue of getting one-half of the purchase price in cash, was guaranteed against loss, and (5) Weisman would "make a lot of money."

Weisman's attorney announced in his opening statement to the jury that, as to this conversation, ". . . of course [Hellerman] didn't explain it to Mr. Weisman what he was

doing . . .," * squarely putting at issue the question whether Weisman knew from this conversation, or discovered at any pertinent time thereafter, that Hellerman was rigging the Automated stock.

The Court, therefore, permitted Hellerman to testify: that on a number of prior occasions he had recommended stocks which he was manipulating to Weisman; that Weisman had purchased, and made money on, one of these stocks, Tabby's International, regarding which Hellerman told Weisman he "had the box"; that he didn't know whether Weisman had purchased two others he had recommended; that Weisman knew that Hellerman had been barred for life from the securities business in 1961 but was nevertheless operating as a hidden principal of a securities firm; and that Weisman knew that Hellerman had been indicted in connection with one of the stocks that Hellerman had recommended to him.

Weisman does not, and cannot, contend that this testimony by Hellerman was improperly admitted. The rule in this Circuit is that "evidence of other crimes is admissible except when offered solely to prove criminal character" on the part of the defendant. *United States* v. *Gerry,* Dkt. No. 74-2100 (2d Cir. March 28, 1975), slip op. at 2599-2600. Hellerman's testimony was clearly not offered or received for that improper purpose, but rather was admitted to show Weisman's knowledge and intent, e.g., *United States* v. *Brettholz,* 485 F.2d 483, 488 (2d Cir. 1973), *cert. denied,* 415 U.S. 976 (1974), specifically to explain ". . . the beginning of appellant's involvement in the criminal enterprise and his state of mind at the time", *United States* v. *Del Purgatorio,* 411 F.2d 84, 86-87 (2d Cir. 1969). Hellerman's testimony was also similarly relevant and admissible to explain the meaning to Weisman of the reference by Heller-

* Tr. 29. The defense conceded in its opening that Hellerman was manipulating Automated.

man to the Tabby's International transaction and "the box", *United States* v. *Del Purgatorio, supra,* 411 F.2d at 87, which established Weisman's understanding of what the offer of Automated stock entailed and his motive and purpose in readily agreeing to a strikingly unusual transaction in which he would spend $14,000 on a newly issued stock solely on the basis of a telephone call, e.g., *United States* v. *Bozza,* 365 F.2d 206, 213-214 (2d Cir. 1966).

When the testimony by Hellerman was received, Weisman objected, and Judge Metzner, in the presence of the jury, stated that the testimony was being taken "against the defendant Weisman, his prior knowledge". (Tr. 115; see also Tr. 129). Indeed, given the circumstances under which this testimony was elicited from Hellerman—whose chronological description of events occurring in 1971 was interrupted after the conversation of May 3 and who was then taken back to conversations and events occurring in 1969 and 1970—the jury could hardly have understood otherwise.*

No limiting instruction was requested by Weisman when the testimony was received. No limiting instruction was requested before the jury was charged.** It was only after the charge to the jury, when the trial court was taking exceptions (and some eight days after Hellerman's testimony

---

* See *United States* v. *Tramunti,* Dkt. No. 74-1550 (2d Cir., March 5, 1975), slip op. at 2167-8. It should be noted, in this connection, that the thrust of Hellerman's testimony was that Weisman knew from conversations with Hellerman what terms such as "the box" meant and that what Hellerman was discussing in the May 3, 1971, conversation was a manipulated stock, not that Weisman himself had habitually engaged in manipulative stock transactions. Indeed, Hellerman's testimony was that Weisman had bought only one of the three stocks he had recommended to him, "wasn't interested in" another, and may or may not have purchased the third.

** Weisman's motion to strike the testimony at the close of the case had been denied (Tr. 1089).

on this point had been received), that defense counsel first broached the question of a limiting instruction on this aspect of Hellerman's testimony.* This oral request to charge, coming as it did for the first time after the jury had been charged, was properly denied by Judge Metzner as untimely (Tr. 1284). *United States* v. *Gonzalez-Carta*, 419 F.2d 548, 552 (2d Cir. 1969); *United States* v. *Strassman*, 241 F.2d 784, 786-787 (2d Cir. 1957). See also *United States* v. *Blazewicz*, 459 F.2d 443 (6th Cir.), *cert. denied*, 409 U.S. 872 (1972).

Moreover, this request was properly refused on still another ground. Defense counsel asked the Court to charge, not that this testimony could be considered by it only on the question of Weisman's knowledge and intent, but rather that if Weisman knew of, or knew of accusations of, or participated in, any of Hellerman's prior manipulations, evidence of such facts could not "be considered by the jury in determining whether Weisman is guilty or innocent of the offense [sic] charged in this indictment". Inasmuch as this request clearly did not reflect the law, a fact which must have been obvious to experienced defense counsel (since

---

* In his brief (at 29 fn.), Weisman says that "Defendant Weisman attempted without success to submit the requested charge to the Court prior to the Court's charge on November 26. Following the Court's charge, the requested instruction was read into the record. (410a-411a [Tr. 1283-1284])". Weisman cites nothing in the record to support the assertion Weisman now makes that he "attempted without success" to submit the charge to Judge Metzner before the jury was instructed, nor does he trouble, in his journey through facts purportedly existing outside the record, to explain what the nature of his "attempt" was or why it was "without success". Furthermore, the portion of the record cited in Weisman's footnote, which relates to the robing room conference at which exceptions were taken, makes no reference to this purported unsuccessful attempt and in no way supports the claim that "the requested instruction was read into the record"; to the contrary, the record suggests that defense counsel was extemporizing orally. In any event, it seems conceded that Judge Metzner never received a written request to give a limiting instruction.

evidence cannot at the same time be properly received in evidence and not considered on the question of guilt), it was quite properly refused. As this Court said in *United States* v. *Kelly,* 349 F.2d 720, 759 (2d Cir. 1965): "If a proffered request is in any respect incorrect, the denial of such a request is not error."

Moreover, even if Weisman had made an accurate request for a limiting instruction in proper form before the jury was charged, it seems clear that a failure to give such an instruction would not, on this record, warrant reversal. The question of Weisman's knowledge and intent was, by the defense's own admission and argument, the only issue in the case as to Weisman. See *United States* v. *Kahaner,* 317 F.2d 459, 477 (2d Cir.), *cert. denied,* 375 U.S. 835 (1963). The jury simply could not have used this evidence for any purpose other than that for which it was received some eight days earlier. *Cf. United States* v. *Tramunti, supra,* slip op. at 2166-2168. It is not surprising, therefore, that the defense has not been able to marshal a single case which supports the proposition that failure under these circumstances to give an instruction limiting the use to which this evidence could be put by the jury constitutes reversible error. *Montgomery* v. *United States,* 203 F.2d 887 (5th Cir. 1953), upon which Weisman appears to rely, deals with an entirely different situation in which evidence "of other offenses different in character" was admitted on the issue of the defendant's motive; *Orloff* v. *United States,* 153 F.2d 292, 294 (6th Cir. 1946), deals with the use of evidence "of a similar offense fifteen years before that charged in the Indictment".

Finding no support in the law, Weisman attempts to construct an argument based upon a misrepresentation of the facts. This edifice has two props: first, that the Government argued, both explicitly and implicitly, that Weisman was "a bad man for associating with the likes of Hellerman" and should be convicted for this reason alone, and,

second, that the only way the jury could rationally have acquitted Lassoff and convicted Weisman was upon the basis of guilt by association.

To begin with, the Government attorney did not, as suggested, expressly argue that Weisman should be convicted for associating with Hellerman; indeed, he specifically argued that Weisman should *not* be convicted "simply because he does business with another man".* Second, the Government did not, as claimed, cloak such an argument in the rubric of references to "circumstantial evidence", which, according to the defense, consisted solely of "evidence that Weisman had previous dealings and associations with Hellerman. . . ." ** This bland assertion is simply false. Powerful circumstantial evidence was supplied by Weisman himself when he admitted attending the breakfast meeting at Hellerman's house on Sunday two weeks after he purchased the Automated stock—though claiming that the meeting dealt solely with the company's business—and admitted that he went directly from that meeting to Cohen's house—though claiming that he made that trip solely to see Cohen's house and to tell Cohen, whom he had never met before, that he was not going to sell his Automated stock.

As to the jury's verdict, it can be rationalized on quite a different basis than that suggested by the defense—the jury simply did not believe Weisman.*** In view of the defense concession at trial that credibility was the only issue in the case—that is, whether, as Hellerman and the other Government witnesses testified, Weisman knew that Hellerman was manipulating Automated and helped him do it, or whether, as Weisman testified, Automated was simply a

---

* Def. Br. 56.

** Def. Br. 28.

*** Lassoff, who was represented by a different attorney, did not testify in his own defense.

routine investment from his point of view—it is difficult to understand how this explanation has escaped the defense's attention.* Indeed, we submit that Weisman's claim that he was no more than an innocent investor unaware of Hellerman's criminal activities was so plainly proven false by the admissions Weisman was forced to make on cross-examination and the testimony of Robert Morvillo that disbelief of Weisman's claim of innocence was compelled and a contrary inference appropriate. E.g., *United States* v. *Tramunti,* 500 F.2d 1334, 1338 (2d Cir. 1974), *cert. denied,* 43 U.S.L.W. 3349 (December 16, 1974).

Finally, even if Weisman could establish that the jury did put the testimony to a broader use than the limited basis on which it was offered, Weisman is entitled to no relief. Weisman was charged with conspiracy, among other offenses, and convicted on that charge. Hellerman's testimony about his earlier transaction with Weisman in Tabby's International stock, though offered only to establish Weisman's knowledge and intent, was clearly relevant, probative and admissible to prove the existence of the conspiracy charged, e.g., *United States* v. *Cioffi,* 493 F.2d 1111, 1115 (2d Cir.), *cert. denied,* 43 U.S.L.W. 3231 (October 21, 1974), *United States* v. *Cohen,* 489 F.2d 945, 949 (2d Cir. 1973); *United States* v. *DeSapio,* 435 F.2d 272, 280 (2d Cir. 1970), *cert. denied,* 402 U.S. 999 (1970); *United States* v. *Bonanno,* 467 F.2d 14, 17 (9th Cir. 1972), *cert. denied,* 410 U.S. 909 (1973), and, more particularly, Weisman's membership in it, *United States* v. *Garelle,* 438 F.2d 366,

---

* The somewhat mutually inconsistent defense contentions—that the jury did not believe everything Hellerman said but did believe everything Hellerman said about his prior associations with Weisman, and that the jury convicted Weisman solely on the basis of guilt by association, but acquitted Lassoff because Hellerman's association with Lassoff in May, 1971, was more extensive than his association with Weisman—are, of course, pure speculation.

368-370 (2d Cir. 1970), *cert. dismissed,* 401 U.S. 967 (1971).* Under these circumstances, there was no requirement that the trial judge limit the use to which the jury might put the evidence, and the refusal to give a limiting instruction was entirely proper. See *United States* v. *Papadakis,* Dkt. No. 74-1847 (2d Cir., January 10, 1975), slip op. at 1244.

POINT II

Weisman was not prejudiced by the admission of proof of his knowledge of Hellerman's prior activities on the Government's direct case.

Weisman urges that Hellerman's testimony to the effect that Weisman knew from past dealings what such terms as "the box" meant and knew that Hellerman was a crooked stock manipulator was so "oblique" and lacking in probative value that its admission on the Government's direct case was an abuse of discretion. For good measure, he then claims that the only reason he testified in his own defense was to rebut Hellerman's testimony concerning these prior transactions. These contentions are absurd and have no basis in fact.

As must be perfectly apparent, the only real issue in the case was whether Weisman knowingly aided Hellerman in his manipulation of Automated or was simply an

---

* Indeed, in *United States* v. *Aloi,* Dkt. No. 74-1220 (2d Cir., January 31, 1975), slip op. at 6072-6073, this Court upheld the admission of strikingly similar evidence on a substantially identical ground:

> "Dioguardi claims error as to him in the introduction of an alleged partnership agreement with Hellerman whereby he was entitled to a certain percentage of Hellerman's profits through his swindles. Such proof did not . . . introduce prejudicial evidence of other unrelated crimes. The relationship with Hellerman and Dioguardi had to be developed to show Dioguardi's place in the AYSL fraud."

innocent investor. Accordingly, evidence that, from his involvement in earlier manipulations by Hellerman, Weisman understood the lingo of stock manipulators and knew that Hellerman was one of them can hardly be oblique. Further, since Weisman's knowledge and intent was put in issue "'. . . at trial, either by the nature of the facts sought to be proved by the prosecution or the nature of the facts sought to be established by the defense' ",* *United States* v. *Brettholz, supra,* 485 F.2d at 488, quoting *United States* v. *Freedman,* 445 F.2d 1220, 1224 (2d Cir. 1970), evidence of Weisman's involvement in an earlier manipulation of Hellerman was admissible in the Government's direct case. *United States* v. *Miller,* 478 F.2d 1315, 1318 (2d Cir. 1973). See also *United States* v. *Purin,* 486 F.2d 1363, 1367 (2d Cir. 1973), *cert. denied,* 417 U.S. 930 (1974). Finally, since Hellerman's testimony on this subject was that Weisman's own misconduct consisted of investing in only one of the three deals he had told him about (while expressly rejecting another), the potential prejudice to Weisman was hardly substantial; hence, this testimony met the test of admissibility on the Government's direct case enunciated in *United States* v. *Gardin,* 382 F.2d 601 (2d Cir. 1967), upon which Weisman relies.

Weisman then boldly states that he "was forced to take the stand" ** to rebut the evidence he claims was improperly received on the Government's direct case. This assertion finds no support in the record whatsoever. What the record does show, in fact, is that Weisman's attorney, in his opening statement, told the jury that they would hear "out of Weisman's mouth" *** about the remark that Hellerman supposedly made to Weisman about "pissing on his grave." Next we learn that Weisman's attorney informed

---

* Indeed, as noted above, Weisman's knowledge and intent was raised in defense counsel's opening.

** Def. Br., p. 40.

*** Tr. 30.

the Government on November 20 (the third day of the eight-day trial)* that Weisman would testify, before (1) the defense had heard the Government's entire case, (2) the defense had moved to strike the testimony of Hellerman which it complains of, (3) the defense had requested a ruling as to the use to which the jury could put this testimony, and (4) the court had refused to give the charge requested by the defense. Finally, when Weisman took the stand he said:

> "Q. Mr. Weisman, before we come to these conversations between yourself and Lassoff again, you know as a lawyer, don't you, you have a right not to get on the witness stand? A. Yes, but I insisted on going on the witness stand.
>
> I testified before the grand jury. I offered to take a lie detector test at my own expense.
>
> The Court: Wait, wait, wait.
>
> Mr. Gould: I got more than I bargained for. I am sorry.
>
> Mr. Walker: Can we have that stricken, your Honor?
>
> The Court: Strike it.
>
> Mr. Gould: Not the whole answer.
>
> The Court: I will strike the lie detector test.
>
> Mr. Gould: Yes, of course, that part, but I think it's proper for him to say he voluntarily testified before the grand jury.
>
> Q. That was voluntary, wasn't it? A. That was voluntary.
>
> Q. You asked to go before the grand jury? A. I asked to go before the grand jury and I asked to be put on the stand here.

---

* Tr. 631, 632.

Q. You wanted to tell the story? A. I wanted to tell the story, yes." *

POINT III

The District Court had jurisdiction of the offense charged in Count Three and the evidence was sufficient for the jury so to find.

Weisman argues that the Government did not show, with respect to the fraud in connection with the purchase and sale of securities charged in Count Three, that there was any "use of any means or instrumentality of interstate commerce, or of the mails . . . ," as required by Section 10(b) of the Securities Exchange Act of 1934. The only proof of the jurisdictional element of Count Three, according to Weisman, was "an intrastate telephone call" (Br. at 42). Since the Government's proof was far more than that, and since, in any event, the vast majority of courts have found intrastate telephone calls to be a sufficient jurisdictional basis, the argument is frivolous.

The Trial Court charged the jury, with regard to Count Three, that:

> "The third element which must be proved beyond a reasonable doubt is that the defendant used, or caused to be used, the mails or the telephones in furtherance of the scheme. This involves a question of credibility since there has been testimony on this trial that the telephone was used in connection with many of the transactions.

---

* Tr. 810-811. See also the minutes of Weisman's sentence on January 7, 1975, at which time Weisman continued to insist upon taking a lie detector test. This, of course, is entirely at odds with the notion that what he really wanted to do was to assert his rights under the Fifth Amendment at trial.

> "It is not necessary for the Government to prove that a defendant actually placed or received in the mail any of the matters specified in the indictment or used the telephone. It is sufficient for the Government to prove that the defendants caused the mailing to be made or the telephone to be used in the ordinary course of business provided you find that the mailing or telephoning was made in furtherance of the scheme.
>
> "Thus, if a defendant knows or could reasonably foresee that his actions would naturally and probably result in the use of the mails or telephones, then he has caused the mails or the telephones to be used" (Tr. 1267, 68).

Weisman does not complain about this charge, to which no objection was made at trial, and the proof that the mails and telephones were used in furtherance of the scheme was overwhelming.

To begin with, there was not just one telephone call involved in the scheme; there were many. Among some notable examples are: the telephone calls between Hellerman and Weisman on May 3; the calls which next ensued between Weisman and Lassoff and Lassoff and Hellerman; the telephone calls between Hellerman and Weisman regarding Frohlich; the telephone calls between Frohlich and Weisman, and then Weisman and Hellerman; the telephone call from Hellerman to Weisman setting up the Sunday breakfast meeting of May 16 at Hellerman's house; the telephone call from Lassoff to Cohen from Hellerman's house; and the telephone call from Weisman to Hellerman from Cohen's house.

In addition, there is no doubt that the mails had been used to further the scheme, specifically including the confirmations mailed on behalf of Pressman, Frohlich and

Frost to Weisman on May 3 and to Cohen on May 4 relating to their respective purchases of 3,000 shares of Automated.*

While these telephone calls and mailings were intrastate, the vast majority of courts have held that this is sufficient to confer jurisdiction. *Heyman* v. *Heyman*, 356 F. Supp. 958, 969 (S.D.N.Y. 1973) and cases cited therein. Obviously, there was ample evidence from which the jury could find that the telephone or the mails had been used in furtherance of the scheme.

Dupuy v. *Dupuy*, 375 F. Supp. 730 (E.D. La. 1974), upon which Weisman relies, stands for the proposition that an intrastate telephone call, under the circumstances of that case, did not in itself meet the jurisdictional test. It does not, however, stand for the general proposition that an intrastate telephone call is never enough to confer jurisdiction. The court in *Dupuy* relied heavily on the facts of the case—which revealed absolutely no use of an instrumentality of interstate commerce beyond the placing of telephone calls between two brothers, the parties in the action, who lived next door to each other, one of whom was selling stock in a family corporation to another—and the Court was careful to distinguish this situation from that of *Myzel* v. *Fields*, 386 F.2d 718 (8th Cir. 1967), *cert. denied*, 390 U.S. 951 (1968), in which "an additional ground of jurisdiction was present," including use of the mails (375 F. Supp. at 734).** Moreover, the *Dupuy* court did

---

* These mailings were stipulated (Tr. 752).

** Weisman also relies upon *Burke* v. *Triple A Machine Shop*, 438 F.2d 978 (9th Cir. 1971); *Rosen* v. *Albern Color Research*, 218 F. Supp. 473 (E.D. Pa. 1963) and *Arber* v. *Essex Wire Corp.*, 342 F. Supp. 1162 (N.D. Ohio), *affirmed without discussion of jurisdictional issue*, 490 F.2d 414 (6th Cir. 1974). But in both *Burke* and *Rosen* local telephone calls were the sole basis of jurisdiction, without any use of the mails at all (438 F.2d at 979; 218 F. Supp. at 475).

not reject the reasoning of an earlier case in its own district, *Ingraffia* v. *Belle Meade Hospital*, 319 F. Supp. 537 (E.D. La. 1970), in which the court found that intrastate telephone calls were sufficient to confer jurisdiction (375 F. Supp. at 736).

POINT IV

The conduct of the Government attorney was entirely proper.

By distorting and extracting out of context various events during the trial, Weisman has managed to fire a volley of charges against the Government attorney which he contends should warrant a new trial. But an examination of the record in its entirety exposes these explosions as lacking in substance and reveals that Weisman received a fair trial.

Weisman begins his broadside by "submitting" that the Government's strategy was "to obtain a conviction at any cost".* In support of this claim, Weisman then strings a couple of remarks from the Government's opening together with some cross-examination of Weisman in a melange which is supposed to show that the Government's theory was that Weisman should be convicted because he associated with members of organized crime. This simply was not the case.

First, the Government attorney's remarks in his opening, taken in context, related to, why Hellerman had solicited Weisman in connection with Automated and what Weisman's motive was in doing business with Hellerman; they had absolutely nothing to do with any association

---

* Def. Br. p. 45.

Weisman might have had with organized crime.* Indeed, it is hard to understand how the Government was to know when it opened to the jury whether Weisman would take the stand and, if so, what his testimony would be.** Hence these remarks in the Government's opening could hardly have been made in anticipation of a cross-examination of Weisman concerning whether he knew that Hellerman was linked to certain gangsters.

Furthermore, and fundamentally, the entire subject of the role of organized crime in the case and Weisman's knowledge of it was interjected by Weisman himself during his cross-examination of Hellerman in a major effort to blacken Hellerman's hardly exemplary character. Hellerman, who completed his direct testimony without having spoken a word about his connections with hoodlums, was then asked by Weisman's attorney:

> "Q. Now, sir, after Belmont, where you don't know how much you made, you went into something called At Your Service Leasing, correct? A. Yes, sir.
>
> Q. And like the others that was a fraud from beginning to end? A. Correct, sir.
>
> Q. And in that case you had some associates, didn't you? A. Many, sir.
>
> Q. Well, you were associated with one John Dioguardia? A. Yes, sir.
>
> Q. What was he, a securities investor? A. No, he was a member of the Mafia.
>
> Q. A gangster, wasn't he? A. Yes, sir.
>
> Q. You knew he was a gangster? A. Yes, sir, sure.
>
> Q. And a fellow named Vinnie Aloi? A. Yes, sir.

---

* The Court is invited to read the Government's entire opening statement, particularly at Tr. 21 and 25.

** In fact the Government did not learn that Weisman would testify until two days later (Tr. 631, 2).

Q. Another gangster? A. Out of the Columbo family, yes, sir.

Q. And Buster Aloi, another gangster, right? A. Yes, sir.

Q. You knew they were gangsters when you became associated with them? A. Yes, sir.

Q. Why did you go into business with these gangsters? A. When you deal in securities, when you deal even in the restaurant business or any business, everybody has what they call a 'rabbi,' a member of an organized crime family that protects you because they come and put the muscle on you and the arm on you and they want a piece of your action, and if I didn't align with Johnny Dio God knows I would have taken, and taking over from Michael's what would have happened to me, and the beatings that to pieces of the deal, or anything else. So in order to operate you have to align yourself with a member of organized crime.

Q. That is necessary? A. 100 percent. You have to.

Q. And that's true of the securities business? A. In the over-the-counter business, the kind of business I was in, it's 100 percent true. Everybody has a rabbi. Everybody knows somebody in the organized crime field that they end up with, and they threaten to break your legs and they threaten your family, like they did mine, and it was for fear of my life that I originally aligned with them. I was trusted by them, and then now that I am testifying every one of them wants to kill me. That's why I am relocated and protected.

Q. I just want to know why when you were doing these security matters you had to have gangsters in association with you. By the way, when you did the Chrislin deal, your first deal—remember Chrislin? The first deal when you got caught, right? A. Yes, sir.

Q. You didn't have gangsters with you, did you? A. It started then, Mr. Gould, when they walked up to me—and they said, 'You are going to give us 3,000 shares at $35 or you are going to be dead, 'be cause they were short, and you know that story, Mr. Gould. You were on tbe case. And they came up and knocked me dead in Russell & Saxes' office because I wouldn't give them the 3,000 shares.

Q. I know that? A. You represented the company. I was one of the owners of the company, Mr. Gould.

Q. You say they were gangsters in the Chrislin deal? A. They came up to put their arms around me. They came up to put their arm on me. We told you the story.

Q. Did you ever testify to that before at any time in any court anywhere? A. I don't remember and I don't know if I did. I wasn't asked the question.

Q. And you said that you told that to me back in 1962? A. Mr. Gould, we told you the exact story of everything and——

Q. Are you telling me now that at any place in the transcript of the Chrislin case, either in the Supreme Court or in the SEC, there is a reference to gangsters threatening you any place? A. I was never asked the question, Mr. Gould.

Q. You never said that to anybody before until just this minute, isn't that true? A. No. That is not so.

Q. Whom did you tell it to? A. Whoever I told the whole story to.

Q. To whom? A. To many people.

Q. When you testified in the case did you tell anybody? A. When did I testify in the case? The SEC, you mean?

Q. Yes. A. In the SEC you only answer the question they ask you, sir, but you can get anybody

at Russell & Saxe then and when those two guys walked up to the office and said, 'You are giving us 3,000 shares at $35,' and I said, 'You are not getting anything,' and I found myself on the floor, and the next thing you find yourself dead. And the next thing the stock was suspended.

Q. Let's go back to your association with the Mafia members in the At Your Service Leasing. That was a car-leasing corporation, wasn't it? A. Yes, sir.

Q. They had made an effort to go public through a regular underwriter; correct? A. Correct, sir.

Q. And it was apparently an unsuccessful underwriting; they didn't sell the issue? A. Right.

Q. How did you get into it? A. One of the organized crime—one of the so-called Mafia members brought me in to do the deal.

Q. They came to you? A. They came to me, knowing I was a stock swindler, knowing I promoted deals and that was my business, they came to me, sir.

Q. Who came to you? A. Ralph Lombardo came to me.

Q. And did he threaten you if you didn't go in the deal? A. No, at that time I was with Johnny Dio already, as was put on the record with the Mafia families in New York, that I was with Johnny Dio, so when Ralph came to me he came to me with respect, and he said to me, 'would you want to do the deal?' And I said, 'Yes.'

And before he could do business with me, I had to arrange many appointments between him and Johnny Dio and Johnny Dio had to confer with his boss, Buster Aloi, and that is how Vinnie Aloi got into the picture, and it was all agreed between the organized families about what the split would be, and how much money there would be. You just do the deal.

When you are in this organized crime, Mafia people, sir, you just don't say I am going to do a deal. You have to get an okay to do a deal. If I make contact with somebody else, I can't tell them, 'Yes, I will do the deal; as far as I am concerned, I will do the deal.'

Mr. Hawke: I object.

The Court: Mr. Gould put the question and he's getting what's coming out. I am fascinated. I wouldn't dream of interfering.

Q. Go on. Tell us all you can about it. A. If somebody comes to me and I say, 'I agree, I will do the deal,' I can't agree myself. We can agree what we're going to do and then it has to be approved by higher-ups, who your boss is in the organized crime family.

Q. You knew all about this? A. Yes, sir.

Q. You had a lot of experience with it? A. Since 19— —real experience was 1968.

Q. By '68 you knew all about the workings of the Mafia, correct? A. I started to learn.

Q. Or what you called the Mafia? A. Yes, sir.

Q. Because you had a lot to do with them? A. I started in '68 to have a lot to do with them.

Q. By the time you got into At Your Service Leasing Company case, you knew all about the operation, didn't you? A. That's correct.

Q. And you told us a few minutes ago that when this fellow Lombardo came to you he came to you with respect; isn't that the term you used? A. Yes.

Q. By that you mean he knew you were part of this apparatus, correct? A. That's correct, sir." (Tr. 220-228)

* * * * *

"Q. Well, now, you went into something called Globus; right? A. Yes, sir.

Q. And this was just when you were finished with At Your Service? A. Yes, sir.

Q. Are you telling us that you didn't go into Globus voluntarily? A. Sure, voluntarily.

Q. Did anybody threaten you that if you didn't go and make an honest living the way other people do they would kill you? A. Mr. Gould, when you're in that society——

The Court: Why don't you answer the question?

Q. I just want to know were you threatened. A. Yes, sir.

Q. Who threatened you? A. Hickey DiLorenzo, Johnny Dio, Tommy Dio, Louis Ostrer. If you would like to know why I will explain it to you.

The Court: He didn't ask you. Let him ask you that.

Q. They threatened you if you didn't go into Globus they would do you some harm? A. If I didn't make money and pay them back the money I owed them for the Belmont deal, the rest of the money, that I would be in a lot of trouble.

Q. Hadn't you paid them the money you owed them? A. I paid them a good portion of it. From Belmont and At Your Service I paid them a good portion, but I still owed them quite a lot of money.

Q. Mr. Hellerman, you testified here this morning that you took in about $200,000 on Belmont, didn't you? A. Yes, sir.

Q. Between $200,000 and $250,000? A. That's correct, sir.

Q. And you didn't remember how much you kept, but then we finally agreed it was about $65,000, $70,000; right? A. How much I spent.

Q. Well, now, you follow me closely, sir. A. Yes, sir.

Q. You did the Belmont deal between March and May, 1970; correct? A. Correct, sir.

Q. And you had all of the money out of Belmont by the 1st of June, 1970? A. Correct, sir.

Q. Correct? And all of the money meant that you had between $200,000 and $250,000? A. Not at one time, but total. Go ahead, yes, sir.

Q. Total? A. Yes, sir.

Q. All right. A. Yes, sir.

Q. And now you are telling us that you didn't pay some of that money over to the goons until you got into the Globus deal; is that right? A. No, I did not say that to you, sir. I said to you I paid out——

Q. Excuse me, Mr. Hellerman, if it is not right, just tell me it is not right. A. It's not correct.

Q. It is not right. A. Would you like——

Q. Didn't you testify a little while ago that you went into the Globus deal because Johnny Dio and his confederates threatened you that if you didn't pay them the money you owed them from Belmont they would do you some harm? A. The balance of the money, right, sir.

Q. The balance of the money? A. Right, sir.

Q. When did you do the Globus deal? A. Right after the At Your Service deal.

Q. And what in time, you know, like a month and a year? A. Very shortly.

Q. Long after Belmont? A. Not long after.

Q. Six months after? A. Yes. Well, one after the other.

Q. You mean you hung these fellows up for six months? A. I didn't have the money to pay. How was I going to pay them? I still owed over $200,000 and out of At Your Service Johnny Dio took all the money I had out of At Your Service and paid off all the debts and there was still an additional debt" (Tr. 235-238).

* * * * *

"Q. Did there come a time when you made some kind of commitment to the Heart Fund to give them money from a memorial to your father? A. No, sir.

Q. That never happened, right? A. No, sir.

Q. After the one in Rockville Center you had another one of these memorial dinners for your father, didn't you? A. Yes, we did.

Q. That was held at the Americana Hotel? A. That's correct, sir.

Q. Didn't you tell the Americana people that the money was going to go to the Heart Fund? A. No, sir.

Q. Now sir, do you remember testifying in the Aloi case? First you were asked about the dinner at Michael's:

'Q. Where was the next one that you held? A. In the Americana Hotel.

'Q. How many guests did you have at that? Could you give me a rough estimate? A. Actual guests, I guess there must have been 140 showed up, 150.' You gave those answers to those questions. A. Yes, sir.

Q. Next question:

"Q. And you told the Americana and the people who were attending that you would use the proceeds for the Heart Fund, is that right? A. Yes, sir.' Didn't you give that answer to that question? A. No, sir, not to my memory.

Q. You mean that the transcript is false? A. If it says that, sir, it is.

Q. I just want you to look at the transcript.

Mr. Walker: Can I see the page?

Mr. Gould: I will give it to you in a moment, Mr. Walker. I'm showing the witness, your Honor, page 2010 from the transcript in United States against Aloi.

Q. You see it there, don't you, sir? A. If you read further, Mr. Gould, you will see what is said, other charities, sir.

Q. Mr. Hellerman, it says here, does it not, when you were asked:

'Q. And you told the Americana and the people who were attending that you would use the proceeds for the Heart Fund, is that right? A. Yes, sir.'

A. Sir, if you take——

Q. Just answer my question.

Mr. Walker: Your Honor, isn't the witness permitted to explain?

The Court: Of course not. He is being asked did he give an answer to a certain question. It's either yes or no.

A. No, I did not give the answer.

Q. So the transcript is wrong? A. It says so right here that it is wrong, sir.

Q. It says——

The Court: It says "Yes," doesn't it? Is the word "yes" wrong in that transcript?

The Witness: Yes, sir. The next——

The Court: Don't tell me about the next paragraph or the next question. The transcript has the answer "yes" to that question. You are now saying the answer "yes" is incorrect?

The Witness: That's correct, sir.

The Court: All right.

Q. Then you were asked the question, after 'Yes, sir':

'Q. You didn't? A. Excuse me. The Heart Fund and other charities, whatever it was.' That's what you said?

A. That's right.

Q. But you did tell the Americana that you were

going to give money to the Heart Fund, didn't you? A. I didn't tell the Americana anything, sir.

Q. You did answer under oath in this case that you told the Americana and the people who were attending that you would use the proceeds for the Heart Fund, you answered 'Yes, sir'? A. No, I did not, sir.

Q. Is that what it says there, Mr. Hellerman? A. Yes, sir. On the next line it says, 'You didn't,' meaning that the man made a mistake. It says——

Q. Then you said 'The Heart Fund and other charities, whatever it was.' A. Right.

Q. Did you ever give one cent, one single cent, to the Heart Fund out of the proceeds of this? A. No, sir. They all went to temples.

Q. It went to temples? A. All the money went to temples.

Q. You have receipts for those? A. Yes, sir.

Q. You have them with you? A. No, sir.

Q. Where are they? A. I'm sure the U.S. Attorney has them because they came out in that case.

Mr. Gould: Would you be good enough to produce them, sir, if you have them?

Mr. Walker: Sure.

Q. Now sir, you ran up a bill for that thing, did you not, at the Americana Hotel? A. Yes, sir.

Q. Did you ever pay the Americana? A. No, sir.

Q. Why not? A. Just the band, because that affair was attended by mostly organized crime people, and Johnny Dio and Hicky DiLorenzo and all those people, they did not pay for their tables, they stiffed me for their tables, so I didn't have the money to pay the Americana.

I just had enough money to have one of the attorneys pay the bank and incidentals that were there, but I didn't have enough money to pay the Americana.

Q. You had money to pay the charities, didn't you? A. From the previous year. We gave the money to Hebrew Academy of Nassau County——

The Court: Wait a second. You're being questioned about the Americana. Let's not talk about any other memorial or raising of money for charity. You're talking solely about the Americana deal.

The Witness: From the Americana deal there was no money given to any charity because there was no money left over to give to any charity.

Q. So when you told the people at the Americana that you would use the proceeds for the Heart Fund and other charities that was a lie, wasn't it? A. It wasn't. If there would have been proceeds, if there would have been any money left over, it would have gone to other charities, as it had in the previous year.

Q. But you did have people there, right? A. Yes, sir.

Q. How many? A. About 140.

Q. And how much did they pay? A. They didn't pay.

Q. Some of them paid, didn't they? A. Right.

Q. How many paid? A. I don't know the exact amount. I would guess about 24, 25, 26 hundred dollars. I don't know the exact amount, the figure. I know the band—I turned all the money from that party over to an attorney, Mr. Martin Ross, to pay all the expenses from it. He paid the band and whatever other expenses he could pay, flowers, whatever it was, and there was no money left over for anything else.

Mr. Walker: Your Honor, Mr. Weisman is making comments which I can hear and I'm sure the jury can.

Mr. Gould: I couldn't hear him. I will tell him not to make any comment.

Mr. Weisman, don't make any comments. Please, if you want to say something say it very quietly, because it disturbs Mr. Walker.

Mr. Walker: It's not just me, your Honor, and Mr. Gould knows that.

Mr. Gould: I didn't hear anybody else complain.

The Court: Go ahead.

Mr. Gould: It doesn't matter really.

Q. Let's get it straight. You had the dinner at the Americana. You took in you say about $2,500, right? A. I don't know the exact amount. Approximately, Mr. Gould.

Q. And the only one that got paid was the band? A. The band, the entertainment, but the Americana did not get paid. I stiffed them for close to $10,000.

Q. You stiffed them? A. Yes, sir.

Q. But you did pay the band? A. Yes, sir.

Q. You didn't give a cent to charity? A. There was no money to give to charity.

Q. No money to give to charity? You sure about it? A. A hundred percent, sir.

Q. We are talking about the Americana, you're not talking about the Michael's thing? A. You're not talking about when I gave the money to charity, you are only talking about the year after.

Q. In the Michael's dinner there was money and you did give it to charity? A. Correct.

Q. And you didn't stiff anybody? A. Correct.

Q. So let's stay with the Americana. In the Americana you stiffed the hotel, you didn't give a nickel to charity.

Why did you elect to give it to the band instead of the charities? Why didn't you stiff the band? A. The band was hired—the man that hired the

band was Sam Berger. Sam Berger was Johnny Dio's partner and either you paid them or you got killed. So the answer was that they got paid.

Q. You never have paid the Americana Hotel, have you? A. No, I have not, sir.

Q. For this memorial to your father? A. No, I have not" (Tr. 267-275).

On redirect examination, the Government attorney asked the following:

"Q. Now, Mr. Gould referred you to a portion of the transcript in United States against Aloi, Vincent Aloi, et al, and that was a transcript in November of 1973, I believe. Is that correct? A. Yes, sir.

Q. And I believe you pointed out to Mr. Gould a portion of the transcript which you said was incorrect; is that correct? A. Yes, sir.

Q. And would you tell us—read the question and answer and the following question and answer and tell us which portion you say is incorrect? A. The question is——

Mr. Gould: May we have the page number?

Mr. Walker: Yes, page 2010.

A. The question is that was asked of me, 'and you told him American'—they must have meant the America(na)—'and the people who were attending that you would use the proceeds for the Heart Fund; is that right?'

And in the transcript here it says my answer was: 'Yes, sir,' and my answer was, 'No, sir' because the next question defense counsel asked me was: 'You didn't?'

So the answer couldn't have been 'Yes, sir.' I couldn't have answered 'Yes, sir,' if the next question of defense counsel was 'You didn't.'

Q. What was the answer you gave there? A. 'Excuse me, the Heart Fund and other charities, whatever they were.'

Q. With regard to the Americana dinner, you mentioned that there were no funds left over to pay the charities for the 1970 affair; is that correct? A. Yes, sir.

Q. Where did the money go? A. Excuse me?

Q. Where did the money go for that affair?

Mr. Gould: Your Honor, this is precisely the question I put to him that was asked and answered.

The Court: I know, but you cut him off on part of his answer. I think I know what the Assistant is trying to get at.

Objection overruled.

A. Whatever money was raised was given to pay the band and the entertainment, not the Americana.

Q. And, sir, who owned the band? A. The band was owned——

Mr. Gould: I object to this, your Honor.

The Court: Overruled.

A. The band was owned by—or booked by Sam Berger, who was Johnny Dioguardi's attorney's partner.

Q. Were any of these Mafia people or organized crime people present at that dinner? A. Yes, many, sir.

Q. Who were they? A. Johnny Dio, Hickey DiLorenzo, Sam Berger, Tony Cardinale. There were many of them there.

Q. Was Sam Weisman present at that dinner? A. Yes, he was, sir.

Q. What did Sam Weisman do at that dinner?

Mr. Gould: If your Honor pleases, this testimony was elicited. He testified yesterday.

The Court: No, I still believe you cross-examined him on it. I don't know whether Mr. Weisman was a toastmaster and ran the dinner, which was the impression you gave me at one point, or whether he was one of the speakers, which was the impression you gave me at another point.

A. Mr. Weisman—we only had one—we had a show, we had Gene Baylis and Janis Harper, and we had a show at the affair. And before the show Mr. Weisman gave a speech, talking about me and my mother and things like that at the affair.

Q. Did you introduce Mr. Weisman to any people at that dinner? A. Yes, I did, sir.

Q. Who? A. I introduced Sam to Johnny Dio. I introduced him to the people in my brother-in-law's business; he was working then for Soptra. I introduced him to Hickey DiLorenzo." (Tr. 520-524).

And on recross Weisman's attorney elicited the following:

"Q. You say at the dinner at the Americana you introduced Mr. Weisman to Johnny Dio, right? A. Yes, sir.

Q. You came up and you said, Mr. Weisman, this is Johnny Dio, the gangster'? A. No, sir.

Q. You said, didn't you, 'This is Mr. Dioguardi,' didn't you? A. No, sir.

Q. What did you say when you introduced him to Johnny Dio? A. Herbert wanted——

Q. What did you say to Mr. Sam Weisman, the defendant in this case, when you introduced him to Johnny Dio?

Mr. Walker: Can we have who was present?

The Court: No.

A. 'Sam, say hello to Johnny.'

Q. That's what you said, 'Sam, say hello to Johnny'? A. Yes, sir.

Q. You didn't say it was Johnny Dio, the gangster? A. He knew it was Johnny Dio.

Q. How did he know? A. Because I had told him before.

Q. You had told him before that it was Johnny Dio, the gangster? Had you told him that before? A. I told him who was going to be at the affair and before I introduced him he said he wanted to meet him.

Q. He would love to meet him? A. Yes, exactly his exact words.

Q. He was anxious to meet him? A. Yes.

Q. Did he ask you if he could do any business with Johnny Dio? A. Who, Sam or Herbert?

Q. Sam. A. No.

Q. That was the whole thing, you just introduced him? A. Yes, sir." (Tr. 539-41).

When Weisman did take the stand he attempted to give the jury the impression that his knowledge of and relationship with Hellerman, particularly including his investment in Automated, was strictly legitimate. In this vein, he explained on direct examination the "Reno deal" (a business venture of Hellerman in which Weisman played a role) as follows:

"Q. Now, sir, in this case there have been some references to a Reno deal. A. Yes.

Q. You heard that? A. Yes, I did.

Q. What was the Reno deal all about? A. Well, sometime in 1961, I think it was, Michael Hellerman and a group of investors wanted to buy some land in Reno for the purpose of building a hotel on that land.

Mr. Louis Hellerman asked me would I go out with him and with Michael and with the other group

of investors to represent them as their attorney in the purchase of the land. I told them I had no objection to going out there, but that we would have to retain local counsel if there was going to be any transaction, since I wasn't familiar with Nevada law. I did go out to Reno.

Q. And what happened? A. And there was a contract signed for the purchase of a large tract of land on which Michael had intended with his other investors to build a hotel on it. He was unable to finance the transaction. It never went through and those investors lost their money who invested the money with him.

Q. Did you have any participation in this? A. No, I didn't. I was there only as an attorney.

Q. Did you ever get paid for your services? A. No, I didn't.

Q. Is there any money in here, in any of the sums enumerated in Weisman Exhibit L, which relates to the Reno deal? A. The sum of $30,000 represents part of the fee for the Reno transaction that I went out. I also went out there three or four times. And also some other actions that had been instituted in which I had advanced disbursements of some 8 or 10 thousand dollars out of my own pocket, which I have never been reimbursed for." (Tr. 780, 781).

On his direct examination Weisman also tried to give the impression that he was not aware of the nature of the criminal charges which had been brought against Hellerman prior to May 3, 1971, and that he didn't know at that time that Hellerman had been associating with members of organized crime. It was in this context that Weisman was probed on cross-examination about his knowledge of Hellerman's associates, as follows:

"Q. Let's turn to the Reno deal. When you went out to Reno did you meet Sidney Handweiler out there? A. Yes.

Q. What was Mr. Handweiler's occupation at that time? A. I don't know what his occupation was.

Q. Didn't you know that he was a bookmaker at that time? A. Oh, no, I didn't know it.

Q. Did you meet a Billy Carr out there? A. Yes.

Q. Who was Billy Carr? A. I have no idea. I only met him there for the first time and was introduced to him.

Q. Was he introduced to you as a bodyguard of Mickey Cohen? A. A what?

Q. A bodyguard of Mickey Cohen at that time. A. Absolutely not.

Q. Do you know who Mickey Cohen is? A. I have heard the name.

Mr. Gould: If your Honor please, I object to this. This isn't proper cross-examination.

The Court: Overruled.

A. I have heard the name Mickey Cohen, but I never met him or had anything to do with him.

Q. You know that Mickey Cohen is a gangster, do you not? A. Only——

The Court: He said he never met him.

Mr. Walker: My question is what his knowledge is, your Honor.

The Court: What difference does it make if he never met him or saw him? I know a lot of people walk in and out of this courtroom. It doesn't mean anything does it?

Mr. Walker: Very well.

The Court: Unless you are going to prove that Mickey Cohen was involved in the Reno deal. I assume you are not."

* * * * *

"Q. Mr. Weisman, now you attended and gave a speech at the 1970 memorial dinner for Louis Hellerman at the Americana Hotel? A. Yes, I did.

Q. And at that dinner you were introduced to Vincent Aloi and others; is that correct? A. Absolutely not.

Q. Well, you knew they were present at that dinner? A. I didn't. I never met those gentlemen, never knew they were there.

Q. When Mr. Hellerman was indicted, isn't it a fact that you learned that he was named in an indictment with several of those individuals? A. I learned he had been named with Johnny Dio—Johnny Dioguardi, yes.

Q. And that Mr. Hellerman was deeply involved with those individuals at that time?

Mr. Gould: Just a minute. Would you read that?

[Record read.]

Mr. Gould: I object to it.

The Court: Sustained.

Q. Did you learn when you learned of the Imperial indictment[*] that Carmine Tramunti was named in that indictment?

A. No, I don't recall that name at all.

Mr. Gould: Objection.

The Court: Overruled.

Q. Did you learn that Vincent Aloi was named in that indictment? A. No, sir.

Mr. Gould: If your Honor, please, I don't think——

The Court: Overruled.

Mr. Gould: —in the absence of some showing who these people are——

---

* The Imperial indictment had been filed in 1970, prior to the manipulation in this case.

Mr. Walker: There has been ample testimony, your Honor.

The Court: There has been ample testimony in this record about who these people are from Mr. Hellerman.

Mr. Gould: No, there was no testimony that he knew who they were, that Weisman knew who they were.

The Court: He's trying to find out whether he knew.

Q. Mr. Weisman, did you know that he had been named in an indictment with Vincent Gugliaro? A. No, sir.

Q. Do you know that he had been named in an indictment with Vincent Lombardo? A. No, sir.

Q. Pasquale Fusco? A. No, sir.

Q. John Savino? A. No, sir.

Q. Philip Bonodono? A. No, sir.

Q. So it was just John Dioguardi or Johnny Dio? A. The only name that I recall, yes."

* * * * *

Q. At the time that you heard that Mr. Hellerman had been indicted with John Dioguardi, did you relate that back to the 1970 dinner and reflect on the fact that you may have met Mr. Dioguardi there? A. No, absolutely didn't.

"The Court: He denied he met him.

Q. Now you were a speaker at the 1968 dinner? A. Yes.

Q. As well, is that correct? A. That is correct.

Q. And were you introduced to any of Mr. Hellerman's associates at that dinner? A. The only one I was introduced to, as I recall, was the Surrogate of Nassau County.

> Q. Surrogate of Nassau County. But you weren't introduced to Mr. Aloi or Mr. Dioguardi or Mr. Trumanti or any of those individuals? A. Absolutely not. I never knew or met any of those gentlemen."

Since the only issue in the case was whether Weisman had knowingly participated in the manipulation of Automated with a man he knew to be a stock-swindler, and since the issue of Hellerman's association with organized crime had been injected into the case by Weisman himself, these questions were entirely proper. In short, there is not a scintilla of proof in the record to support Weisman's fanciful notion that "the government was attempting to have the jury surmise that Weisman knew these men and have him convicted because of such surmised association." *

Not fully content with the force of this argument Weisman then points to an incident in the Government's summation in support of his theory that the Government was out for his scalp at any price. In summation the Government attorney argued that the witness Martin Cohen—a friend of Harold Lassoff—had been a reluctant witness and had not been completely candid about whether he had agreed to split his profits on Automated with Hellerman. While Weisman claims this constituted misconduct, he does not make it clear just how this argument prejudiced him; indeed, it would be difficult to clarify since the argument was directed primarily at Lassoff. Furthermore, the prosecutor's argument was well founded because, as the record demonstrates, Cohen was not forthcoming in his testimony and was not giving the answers the Government attorney had expected.** In fact at one point the Trial Court itself questioned Cohen in aid of the Government's direct examination.*** Finally, there is no rule in this

---

* Def. Br. p. 50.

** See Tr. 709 through 720.

*** Tr. 718-720.

Circuit that the party calling a witness vouches for his credibility. *United States* v. *Freeman*, 302 F.2d 347, 351 (2d Cir.), *cert. denied*, 375 U.S. 958 (1963). Thus there was nothing about these remarks which supports the notion that the Government was intent upon convicting Weisman at any cost.

Third, and furthest from the mark so far, is Weisman's contention that the Government attorney was relying upon evidence which had been stricken from the record when he argued in summation that Weisman knew that his son, Herbert Weisman, had represented Hellerman in a stolen bond case in the 1960's and had received some Imperial stock as a fee. This claim is particularly outrageous because the evidence upon which the Assistant was relying was reluctantly supplied by Weisman himself:

> "Q. Mr. Weisman, your firm represented Mr. Hellerman in a stolen bond case in the mid-'60's, did they not? A. My firm didn't. My son did, individually.
>
> Q. Your son represented him individually? A. I don't do any criminal work.
>
> Q. I see. But was your son a partner of yours at that time? A. No, we had an individual practice. He was associated with me in the office, but our practices were individual.
>
> Q. Now, sir, did you yourself receive bonds from Mrs. Hellerman at about that period of time? A. Absolutely not.
>
> Q. You never purchased any bonds in connection —from Mrs. Hellerman? A. Positively not.
>
> Q. And did you ever have a—sir, directing your attention to the mid—'60's, did you ever purchase bonds? A. Did I ever purchase bonds?
>
> Mr. Gould: I object to this, your Honor.
>
> Mr. Walker: I withdraw the question.

Mr. Gould: Well now, the withdrawal of a question after a question about stolen bonds is not proper.

The Court: I am sorry, Mr. Gould. He's withdrawing the question did he purchase any bonds.

Go ahead, Mr. Walker.

Q. Mr. Weisman, you were very close to Herbert Weisman during this period of time? A. Of course we were close.

Q. You discussed various matters that would come into the office; is that correct? A. We did discuss various matters, yes.

Q. You discussed this stolen bond case? A. No.

Mr. Gould: I object to any reference to a stolen bond case.

Mr. Walker: He just testified——

Mr. Gould: No, Mr. Walker testified.

The Court: He never represented him in any stolen bond case.

Q. My question was, were you aware of the fact that Herbert was representing him in a stolen bond case? A. I remember Herbert was representing him, but in what capacity—I was not. I never represented him in criminal cases because that was not my practice at all.

The Court: That is not the question you are being asked. You are being asked whether you knew your son Herbert represented Michael Hellerman in a stolen bond case. Yes or no.

The Witness: I may have known that in general discussions in the office.

Q. And did you discuss with him the circumstances of that case? A. No, sir, I did not.

Q. But your testimony is that you knew generally that your son had such a case?

Mr. Gould: I object to that, your Honor. He already answered that.

The Court: Overruled.

A. I knew he represented Mr. Hellerman in a case in which he was charged with having stolen some bonds.

Q. And that was in the mid-60's; is that correct? A. I believe—about that time. I can't say definitely" (Tr. 893-896).

* * * * *

"Q. There came a time, sir, did there not, when your son Herbert received a substantial quantity of Imperial from Mr. Hellerman? A. I know he received some Imperial as a fee for representing him in whatever legal matter he represented Mr. Hellerman. That's all I know about it" (Tr. 910).

Since none of that testimony had been stricken there was absolutely nothing wrong with that argument.

Finally, little need be said, in view of the distortions and half-truths already noted, about the Assistant's comments in summation to the effect that the proof showed that Weisman had knowledge of Hellerman's manipulation of Automated and of Hellerman's involvement in other criminal activities and, therefore, Weisman could not, as he had hoped to convince the jury, have thought Automated to have been a totally legitimate deal. These remarks—which were directed at Weisman's knowledge of Hellerman's associations and not at Weisman's own associations—went right to the heart of the case—Weisman's knowledge and intent.

CONCLUSION

The judgment of conviction should be affirmed.

Respectfully submitted,

PAUL J. CURRAN,
United States Attorney for the Southern District of New York, Attorney for the United States of America.

ROBERT P. WALTON,
JOHN D. GORDAN, III,
Assistant United States Attorneys,
Of Counsel.

★ U. S. Government Printing Office 1975— 614—213—493

AFFIDAVIT OF MAILING

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

ROBERT P WALTON being duly sworn, deposes and says that he is employed in the office of the United States Attorney for the Southern District of New York.

That on the 14TH day of APRIL, 1975 he served 2 copies of the within brief by placing the same in a properly postpaid franked envelope addressed:

MILTON S GOULD, ESQ.
SHEA GOULD CLIMENKO KRAMER
& CASEY
330 MADISON AVENUE
NEW YORK, NEW YORK 10017

And deponent further says that he sealed the said envelope and placed the same in the mail drop for mailing at the United States Courthouse, Foley Square, Borough of Manhattan, City of New York.

Robert P Walton

Sworn to before me this

14TH day of April, 1975

Lawrence S. Feld

LAWRENCE S. FELD
Notary Public, State of New York
No. 31-6258852
Qualified in New York County
Commission Expires March 30, 1976